STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 122373-001**

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this _1st_ day of December 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 18, 2011, XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. On July 25, 2011, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The Petitioner receives health care benefits under benefit plan underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on August 1, 2011.

The issue in this external review can be decided by a contractual analysis. The contract here is BCBSM's *Community Blue Group Benefits Certificate* (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

On December 21, 2010, the Petitioner, while on vacation in XXXX, received emergency care from Dr. XXXXX. Dr. XXXXX does not participate with BCBSM or BCBS of XXXXX. The total charged for this care was $665.00. BCBSM paid its approved amount of $259.55, leaving Petitioner responsible for the balance of $405.45.

Petitioner appealed BCBSM's payment amount through its internal grievance process. BCBSM held a managerial-level conference and issued its final adverse determination on June 23, 2011.

III. ISSUE

Is BCBSM required to pay an additional amount for Petitioner's emergency care received on December 21, 2010?

IV. ANALYSIS

Petitioner's Argument

In a letter to BCBSM, Petitioner wrote:

> I contacted Dr. XXXXX's office to find out why the balance was so high and they stated that he does not accept BCBS and that basically they can charge for services, as they deem necessary. They were not willing to negotiate the balance with me. I then contacted BCBS of Michigan to protest and they said that the insurance payment made was normal and customary for this type of service.
>
> When I visited the emergency room while away on vacation, I was not given a choice to see a doctor who accepted BCBS – I was given the doctor on duty responding to emergencies.

BCBSM's Argument

In its final adverse determination of June 23, 2011, BCBSM denied additional reimbursement stating:

> The payment of $259.55 represents our full approved amount for the emergency room visit. As explained in part 4.2 of your *Community Blue Group Benefits Certificate*, we pay our approved amount for covered physician services. The approved amount is defined on page 7.2 as "The lower of the billed charge or our maximum payment level for the covered service."
>
> A participating provider accepts our approved amount as payment in full. However, as explained on page 7.17 of the certificate, nonparticipating providers have not signed a participation agreement with BCBSM to accept the approved amount as payment in full. Because [Dr. XXXXX's practice] is not a participating provider, you are liable for the difference between the approved amount and the provider's charge.

Commissioner's Review

Under the certificate, enrollees incur the least out-of-pocket cost if they receive services from providers who participate with BCBSM. The certificate (page 4.33) lists the services that are payable:

> **HOW PHYSICIAN AND OTHER PROFESSIONAL PROVIDER SERVICES ARE PAID**
>
> **Nonpanel Providers**
>
> * * *
>
> If the nonpanel provider is **nonparticipating**, you will need to pay most of the charges yourself. Your bill could be substantial. After paying the provider, you should submit a claim to us. If we approve the claim, we will send payment to the subscriber.
>
> **NOTE:** Because nonparticipating providers often charge more than our maximum payment level, our payment to you may be less than the amount charged by the provider.

As a nonparticipating provider, Dr. XXXXX is not bound to accept BCBSM's approved amount as payment in full for his services and may bill the Petitioner for any difference between his charge and BCBSM's approved amount.

There is nothing in the certificate that requires BCBSM to pay more than its approved amount, even in an emergency or even if there are no participating providers available. The Commissioner finds BCBSM correctly processed the claims.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of June 23, 2011, is upheld. BCBSM is not required to pay any additional amount for the emergency care Petitioner received from Dr. XXXXX on December 21, 2010.

This is a final decision of an administrative agency. Under MCL 550.1915(1), any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner